

REMARKS

Formal Matters

Claims 1 and 224-230 are pending after entry of the amendments set forth herein.

Claims 2-223 have been canceled, without prejudice to the possibility of filing one or more continuing applications directed to the subject matter recited therein.

Claims 1, 12-13, 46, 53, 58, 190-192, 194-202 and 219-223 were examined.

Claims 1, 12-13, 46, 53, 58, 190-192, 194-199, 202 and 219-222 were rejected.

Claims 200 and 201 were objected to, but indicated to contain allowable subject matter.

Claims 223 was allowed.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

Claim Rejected Under 35 U.S.C. Section 102(e) (Boyd et al.)

In the Official Action of February 2, 2011, claims 190-192, 194-198, 202 and 219-220 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Boyd et al., U.S. Patent No. 5,799,661.

The Examiner asserted, inter alia, that Boyd et al. discloses a device in Fig. 44 that includes a malleable member extending along at least a portion of the length of the tube 231.

Applicants respectfully traverse. It is respectfully submitted that Boyd et al. does not disclose a malleable member. Boyd et al. discloses that the flexible heat exchanger 231 may have a flexible backbone 238 made from a flexible polymer, elastomer or a resilient metal wire, see column 21, lines 34-38. Accordingly, Boyd et al. intends the heat exchanger to be flexible and resilient, not malleable.

The Examiner asserted that Boyd et al. discloses a flexible tube containing a plurality of particles.

Applicants respectfully traverse. Applicants were unable to find any disclosure by Boyd et al. of a flexible tube containing a plurality of particles. Boyd et al. provides a flexible heat exchanger having

at least one fluid passage 232 therethrough to circulate a cooling fluid, disclosed as saline, see column 21, lines 5-25. It is respectfully submitted that Boyd et al. does not disclose a tubular member containing particles, contrary to the Examiner's assertion.

In view of the above cancellation of claims 190-192, 194-198, 202 and 219-220 without prejudice, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 190-192, 194-198, 202 and 219-220 under 35 U.S.C. Section 102(e) as being anticipated by Boyd et al., U.S. Patent No. 5,799,661, as being moot.

Claim Rejected Under 35 U.S.C. Section 103(a) (Boyd et al. in view of Buckman, Jr. et al.)

Claims 1, 46, 53, 58 and 221 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Boyd et al., U.S. Patent No. 5,799,661, in view of Buckman, Jr. et al., U.S. Patent No. 5,582,580.

The Examiner asserted that Boyd et al. disclose the invention substantially as claimed except for a device that includes a means for introducing positive/negative fluid pressure to the contact member. The Examiner did not specifically identify how Boyd et al. is considered to disclose all of the features of claims 1, 46, 58 and 221.

Applicants respectfully submit that Boyd et al. fails to disclose, teach or suggest a contact member that is variably shapeable to a plurality of different shapes as claimed, or an elongated malleable member as claimed, or a having a shaft connected to said contact member as claimed.

The Examiner asserted that Buckman, Jr. et al. teaches a contact member 82 that is malleable (Fig. 7, column 9, line 28-column 10, line 63) and that it would have been obvious to modify the device of Boyd et al. to include a means for introducing pressure to the contact member, as taught by Buckman, Jr. et al. in order to provide an alternate means of shaping the contact member that allows the contact member to have a plurality of different shapes.

Applicants respectfully traverse. It is respectfully submitted that Buckman, Jr. et al. does not disclose a malleable contact member 82, but rather that 82 is a heart contacting member having a flexible sidewall, see column 9, lines 46-48. Further, Buckman, Jr. et al. applies pressure to the contact member to apply a massaging motion to the heart. There would have been no need for this functionality in the hypothermia device 230 of Boyd et al. It is respectfully submitted that it would not have been obvious to modify Boyd et al. as suggested by the Examiner, as this would only overcomplicate (and add to the expense of) the design of the heat exchanger, with little or no value or advantage to be gained therefrom.

Further, claim 1 has been amended to clarify that the malleable member is continuously adjustably shapeable by manipulation thereof to a desired shape, and wherein upon release of manipulation force, said malleable member maintains said desired shape. It is respectfully submitted that this claimed characteristic is the opposite of what is disclosed by Boyd et al., as the heat exchanger and backbone of Boyd et al. resiliently return to an unfolded position after manipulation thereof and release of manipulation forces.

It is respectfully submitted that Boyd et al. does not disclose a malleable member. Boyd et al. discloses that the flexible heat exchanger 231 may have a flexible backbone 238 made from a flexible polymer, elastomer or a resilient metal wire, see column 21, lines 34-38. Accordingly, Boyd et al. intends the heat exchanger to be flexible and resilient, not malleable. Likewise, the walls 84 of member 82 of Buckman, Jr. et al. are flexible, not malleable.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 1 (claims 46, 53, 58 and 221 having been canceled without prejudice) under 35 U.S.C. Section 103(a) as being unpatentable over Boyd et al., U.S. Patent No. 5,799,661, in view of Buckman, Jr. et al., U.S. Patent No. 5,582,580, as being inappropriate.

Claim Rejected Under 35 U.S.C. Section 103(a) (Boyd et al. in view of Buckman, Jr. et al. and further in view of Heilman et al.)

Claims 12, 13 and 222 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Boyd et al., U.S. Patent No. 5,799,661, in view of Buckman, Jr. et al., U.S. Patent No. 5,582,580, and further in view of Heilman et al., U.S. Patent No. 5,098,369.

The Examiner asserted that Boyd et al. and Buckman, Jr. et al. disclose the invention substantially as claimed except for a contact member that contains a conformable material that is granular, a polymeric, or a gel.

Applicants respectfully traverse. It is respectfully submitted that Boyd et al. and Buckman, Jr. et al. do not disclose the invention substantially as claimed except for a contact member that contains a conformable material that is granular, a polymeric, or a gel, for at least the reasons provided above with regard to the rejection of claims 1 and 221.

In view of the above cancellation of claims 12, 13 and 222 without prejudice, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 12, 13 and 222 under 35 U.S.C. Section 103(a) as being unpatentable over Boyd et al., U.S. Patent No. 5,799,661, in view of

Buckman, Jr. et al., U.S. Patent No. 5,582,580, and further in view of Heilman et al., U.S. Patent No. 5,098,369, as being moot.

New Claims 224-230

New claims 224-230 have been submitted above. Support for these claims can be found, for example, at Fig. 6A, the description thereof, and throughout the specification and drawings. Applicants respectfully request the indication of allowance of claims 224-230 in the next Official Action.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-005CON6.

Respectfully submitted,
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